

INITIAL STATEMENT OF REASONS
(Drills and Exercises)
May 17, 2006

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act) (see Government Code Sections 8574.1 through 8670.72) provides, in part, for the development of oil spill contingency plans for tank vessels, nontank vessels and marine facilities. These plans are to be used to prepare for the response effort that would be necessary in the event of a discharge of oil into the marine waters of the State. The Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are at all times protected by prevention, response, containment and clean-up equipment and operations.

California Code of Regulations Title 14, Subdivision 4, Chapter 1, Section 820.01 contains the requirements for drills and exercises in the regulations promulgated under the Act. The proposed amendments are needed to further clarify the requirements for drills and exercises. The specific purpose for each adoption, amendment, or repeal contained in these proposed regulations is set forth below. (Grammatical/technical changes have also been made throughout this subchapter, which have no regulatory effect):

Subsection (a) has been amended for clarity by listing the components of a contingency plan that must be exercised. These components come from the requirements found in Title 14, California Code of Regulations Subchapter 3. This subsection also lists the deadline for requesting drill credit from OSPR. Currently, there is no standardized timeline for requesting drill credit and OSPR receives them in a haphazard fashion which makes them difficult to process. This will standardize this process and inform the regulated community of the new deadline.

Subsections (a)(1) and (2) now lists the drill and exercise requirements for the specific vessels and facilities as listed. The requirements for Subsection (a)(1) are taken from CCR Section 817.02(k) and 817.03(k). The requirements for Subsection (a)(2) are taken from CCR Section 818.02(l), 818.03(l) and 827.02(m). Those subsections now refer to the requirements in Section 820.01(a)(1) and (2) . Instead of duplicating the requirements in those individual sections, it seemed more prudent to direct the plan holder to the well defined drill and exercise section (820.01), which will be utilized by all of the regulated community (tank vessels, marine facilities, etc.) The regulated community will now have one section to refer to for all their drill and exercise requirements, instead of having to look them up in the individual sections. Subsections (3) and (4), which document the required drill frequency and documentation, are also taken from those sections.

Subsections (b) and (c) have been substantively moved from Subsection 820.01(f). Language has been added which references the Shoreline Protection Tables requirements

(SP Tables, incorporated by reference) that must now be drilled by vessels. These SP Tables show the sites to be protected, the hour by which they should be protected, and the response resources required to provide initial protection. These tables provide a standard for BAP for shoreline protection, as required by Government Code Sections 8670.28(a)(9) and 8670.29(g). This fulfills the requirement to test shoreline protection capabilities, as required by Government Code Section 8670.10(b).

[New] Subsection (d) has been amended to provide updated information on how to provide notification to the Administrator of a drill, including the advance notice time frame. This will assure that industry has clear notification instructions, and that they give the Administrator ample advance time so that OSPR staff may be able to participate and evaluate the drills.

[New] Subsection (e) has been amended to more closely match the requirements of the U.S. Coast Guard in their PREP Guidelines. PREP is the standard for the United States and including the requirements here will maintain consistency across the country. OSPR has, however, included some California-specific requirements (under the “CA” notation). As California’s drill program has evolved, OSPR has identified specific staffing (Liaison Officer) and response options (in-situ burning, dispersants, bioremediation, and vessel emergency services) that need to be included in a well developed and comprehensive California drill. The California-specific requirements are elements that are included in contingency plans, and listing them here will ensure that all parts of a plan are regularly exercised, as required by Government Code Section 8670.29(d)(6).

[New] Subsection (f) has been amended to provide more detail of the documentation that is required in order to receive drill credit. Most of the amendments are technical changes that have no regulatory effect.

Subsection (f)(8) now includes information on records retention, so that the Administrator is able to evaluate drills from previous years, if necessary.

Subsection (f)(8)(B) now requires that information that may be of benefit to the applicable Harbor Safety Committee (HSC) should be documented. The HSCs are the local forum for discussion and resolution of safety issues that may result in a pollution incident. The HSC continually revise and update their Harbor Safety Plans, so safety information discovered during a drill should be forwarded to them for their information.

Subsection (f)(11) has been added to aid the Plan Holder and Administrator in their review of the information that is required to be submitted.

[New] Subsection (g) has been amended to provide more information about receiving drill credit from the Administrator. Language has been added that the Administrator may audit all drill documentation before credit will be given. This will allow the Administrator the option of performing an audit of the drill documentation to verify the drill and the components tested, if needed, without having to have the Plan Holder submit copious amounts of documentation to the state.

[Old] Subsection (f) has been repealed because the new requirements for testing shoreline protection are now found in Subsection 820.01(b). Subsection (b) now incorporates the

testing that needs to be done by vessels in accordance with the new Shoreline Protection Tables. The SP Tables provide a standard for BAP for shoreline protection, as required by Government Code Sections 8670.28(a)(9) and 8670.29(g). This fulfills the requirement to test shoreline protection capabilities, as required by Government Code Section 8670.10(b).

[Old] Subsection (g) has been repealed as redundant. Language that the Administrator may conduct a drill or inspection at any time, has been added throughout this section.

Subsection (h)(1) has been amended to remove reference to the specific drill requirements in the marine facility, small marine fueling facility, tank vessel, vessel carrying oil as secondary cargo, and nontank vessel sections. The detailed, specific drill requirements for all entities are now found in Subsection (a) of this Section 820.01.

Subsection (h)(2) has been amended to clarify which types of drills are allowed to be conducted out of state. Plan Holders may contract with a Spill Management Team (SMT) that performs these services for many entities, including companies that are not in California. While allowance is made to give credit for a SMT drill that is conducted out of state, the Administrator still needs to be assured of the SMT's ability to function properly if a spill were to happen in this state. Therefore, the Administrator wants, at least once every three years, for the SMT to conduct a table top exercise (i.e., simulated equipment deployment) in California, where the drill can be observed and evaluated.

Subsection (i) has been amended to remove reference to the specific drill requirements in the marine facility, small marine fueling facility, tank vessel, vessel carrying oil as secondary cargo, and nontank vessel sections. The detailed, specific drill requirements for all entities are now found in Subsection (a) of this Section 820.01. Language has also been added to reference OSPR's Sensitive Site Strategy Evaluation program. This program fulfills the requirements of new CCR Section 820.01(f), which requires that shoreline protection response strategies identified in the new Shoreline Protection tables are exercised to ensure that these are the most feasible and effective strategies to use during an actual oil spill.

Subsection (j) has been amended to remove reference to "Internal Unannounced Exercises", and "External Unannounced Exercises". Now all unannounced exercises are subject to the same requirements and do not have to meet different requirements based on whether they are internal or external unannounced exercises.

Subsection (k) has been amended so that after a spill, documentation of procedures or other measure adopted to prevent a similar spill must be added to the Plan Holder's Contingency plan. This will help ensure that the Plan Holder has taken precautions to prevent a reoccurrence of a spill under similar circumstances.

DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:
None.

BUSINESS IMPACT

OSPR has made an initial determination that the proposed amendments may have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No alternative which was considered by the OSPR would be more effective than or equally as effective as and less burdensome to affected private persons than the proposed amended regulations

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)

The regulations do not conflict with Federal statutes or regulations.